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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/764,123	01/24/2004	Robert F. Buckman	212/551	6075

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EXAMINER

WIEKER, AMANDA FLYNN

ART UNIT	PAPER NUMBER
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3743

DATE MAILED: 06/02/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

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Office Action Summary	Application No. 10/764,123	Applicant(s) BUCKMAN ET AL.	
	Examiner Amanda F. Wieker	Art Unit 3743	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 May 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-9 and 11-22 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 8,9 and 11-22 is/are allowed.
- 6) ☒ Claim(s) 1-7 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 24 January 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 22 April 05.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-4 and 6-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent Number 4,649,907 to Whitehead et al. in view of U.S. Patent Number 5,897,555 to Clyburn et al.

Whitehead et al. disclose a splint system (1) adapted for generating traction on a leg of a patient, said system comprising:

a telescoping splint (4/5) having a distal end (left in Figure 1) and a proximal end (right in Figure 1);

a distal limb support member (26) disposed on the distal end of the telescoping splint, said distal limb support member being adapted to accommodate a foot of the patient, limit proximal motion of the foot relative to the telescoping splint, and impart caudally directed force on the top of the foot (see Figure 2);

a proximal limb support member (42) disposed on the proximal end of the telescoping splint, said proximal limb support member being adapted to fix an axial support member of the splint (4/5) to the leg of the patient proximal its position on the leg;

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an axial support member (4/5) operably connecting and maintaining a relative position between the distal limb support member and the proximal limb support member; and

means for securing (25) the telescoping splint in a telescoped length to apply traction to the leg of the patient.

The apparatus disclosed by Whitehead et al. disclose a measurement apparatus (81) to determine the amount of traction force being generated in the telescoping splint. The telescoping splint (4/5) comprises telescoping hollow structures (see Figure 4) that are selectively lockable and unlockable at a plurality of pre-determined lengths. Whitehead et al. also disclose at least one “intermediate support and stabilization member” (37).

The normal use of the device disclosed by Whitehead et al. incorporates the claimed method steps including:

expanding a telescoping splint (4/5) of a traction generating device (1);

locking the telescoping splint of the traction generating device at a desired length (with 25);

affixing a proximal support member (42) to a limb region closer to the body relative to the damaged region of said limb;

affixing a distal support member (26) to a limb region further from the body relative to the damaged region of said limb;

and applying tension on said damaged limb by generating compressive forces within said telescoping splint.

The normal use of the device disclosed by Whitehead et al. further comprises the step of measuring the amount of compressive forces in an axial support member of the splint, by

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reading a gauge (81). Whitehead et al. do not specify that the telescoping splint does not extend distally beyond the distal support member. However, a careful review of the specification shows that Applicant has not provided any criticality to this feature of the invention, and the device disclosed by Whitehead et al. appears to perform an identical function to that claimed. Therefore, it would have been obvious to one skilled in the art to have provided the splint system disclosed by Whitehead et al., wherein the splint extends or does not extend beyond the distal support member, in accordance with the desired functioning of the device. Whitehead et al. do not specify that the splint system be radiolucent and non-magnetic.

Clyburn et al. disclose a splint system for generating traction on a limb of a patient comprising a splint that is made of radiolucent, non-magnetic material such as 33% glass fiber reinforced PPA resin. Clyburn et al. specify that the splint be made of radiolucent, non-magnetic material to allow true images of the injured limb to be taken while the splint is providing tension to the limb.

It would have been obvious to one skilled in the art at the time the invention was made to have provided the splint system disclosed by Whitehead et al., wherein the splint is made from a radiolucent, non-magnetic material, as taught by Clyburn et al., to allow true images of the injured limb to be taken while the splint is being worn.

3. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Whitehead et al. in view of Clyburn et al. in further view of U.S. Patent Number 6,786,882 to Slishman.

Whitehead et al. in view of Clyburn et al. disclose the previously described splint system adapted for generating traction on a leg of a patient comprising a telescoping splint (4/5) having a distal end and a proximal end. Whitehead et al. do not specify that the telescoping splint is collapsible to 50% or less of its fully expanded length.

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Slushman discloses a splint system adapted for generating traction on a limb of a patient comprising a telescoping splint having a distal end and a proximal end. Slushman discloses that the telescoping splint comprises three section and collapses to at least 50% or less of its total expanded length, to allow compact storage of the splint system.

It would have been obvious to one skilled in the art at the time the invention was made to have provided the splint system disclosed by Whitehead et al. in view of Clyburn et al., wherein the splint is collapsible to at least 50% of its fully expanded length, as taught by Slushman, to allow compact storage of the system.

4. Claims 1-3, 6 and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent Number 2,319,400 to Hartmann et al. in view of Clyburn et al.

Hartmann et al. disclose a splint system adapted for generating traction on a leg of a patient, said system comprising:

- a telescoping splint having a distal (bottom) end and a proximal (top) end;

- a distal limb support (22/54) member disposed on the distal end of the telescoping splint, said distal limb support member being adapted to accommodate a foot of the patient, limit proximal motion of the foot relative to the telescoping splint, and impart caudally directed force on the top of the foot, wherein the telescoping splint does not distally extend beyond the distal limb support member (see Figures);

- a proximal limb support member (14/46) disposed on the proximal end of the telescoping splint, said proximal limb support member being adapted to fix the axial support member to the leg of the patient at a proximal position on the leg;

- an axial support member (12/10) operably connecting, and maintaining a relative position between the distal limb support member to the proximal limb support member; and

means for securing (44) the telescoping splint in a telescoped length to apply traction to the leg of the patient. The telescoping splint comprises telescoping hollow structures (10/12) that are selectively lockable and unlockable at a plurality of pre-determined lengths (locking points capable of being predetermined by the user). The apparatus further comprises at least one intermediate limb support and stabilization member (50). Hartmann et al. do not specify that the splint system be radiolucent and non-magnetic.

Clyburn et al. disclose a splint system for generating traction on a limb of a patient comprising a splint that is made of radiolucent, non-magnetic material such as 33% glass fiber reinforced PPA resin. Clyburn et al. specify that the splint be made of radiolucent, non-magnetic material to allow true images of the injured limb to be taken while the splint is providing tension to the limb.

It would have been obvious to one skilled in the art at the time the invention was made to have provided the splint system disclosed by Hartmann et al., wherein the splint is made from a radiolucent, non-magnetic material, as taught by Clyburn et al., to allow true images of the injured limb to be taken while the splint is being worn.

5. Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hartmann et al. in view of Clyburn et al. in further view of Whitehead et al.

Hartmann et al. in view of Clyburn et al. disclose the previously described splint system adapted for generating traction on a leg of a patient comprising a telescoping splint having a distal end and a proximal end. Hartmann et al. do not specify the presence of a measurement apparatus.

Whitehead et al. disclose a splint system adapted for generating traction on a limb of a patient comprising a telescoping splint having a distal end and a proximal end. Whitehead et al.

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disclose a measurement apparatus (81) to determine the amount of traction force being generated in the telescoping splint.

It would have been obvious to one skilled in the art at the time the invention was made to have provided the splint system disclosed by Hartmann et al. in view of Clyburn et al., wherein the splint includes a measurement apparatus, as taught by Whitehead et al., to determine the amount of traction force being generated in the telescoping splint.

6. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hartmann et al. in view of Clyburn et al. in further view of U.S. Patent Number 6,786,882 to Slishman.

Hartmann et al. in view of Clyburn et al. disclose the previously described splint system adapted for generating traction on a leg of a patient comprising a telescoping splint having a distal end and a proximal end. Hartmann et al. do not specify that the telescoping splint is collapsible to 50% or less of its fully expanded length.

Slishman discloses a splint system adapted for generating traction on a limb of a patient comprising a telescoping splint having a distal end and a proximal end. Slishman discloses that the telescoping splint comprises three section and collapses to at least 50% or less of its total expanded length, to allow compact storage of the splint system.

It would have been obvious to one skilled in the art at the time the invention was made to have provided the splint system disclosed by Hartmann et al. in view of Clyburn et al., wherein the splint is collapsible to at least 50% of its fully expanded length, as taught by Slishman, to allow compact storage of the system.

Allowable Subject Matter

7. Claims 8-9 and 11-22 are allowed.

Response to Arguments

8. Applicant's amendments and arguments, see pages 13-15, filed 12 May 2005, with respect to claims 8-9 and 11-22 have been fully considered and are deemed to overcome the relevant prior art. The rejection of these claims has been withdrawn.

9. Applicant's arguments filed 12 May 2005, with respect to claims 1-7, have been fully considered but they are not persuasive.

Applicant argues that Whitehead et al. in view of Clyburn do not disclose that the traction-generating device does not extend beyond the patient's limb. However, as noted above, Applicant has provided no criticality to this feature. Therefore, it is considered to be have been obvious to one skilled in the art to have provided the splint system disclosed by Whitehead et al., wherein the splint extends or does not extend beyond the distal support member, in accordance with the desired functioning of the device.

Conclusion

10. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

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however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

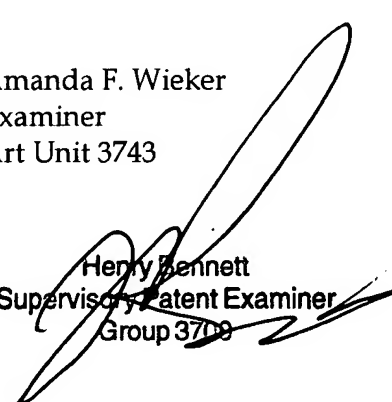
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Amanda F. Wieker whose telephone number is 571-272-4794. The examiner can normally be reached on Monday-Thursday, 7:30 - 5:00 and alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Henry Bennett can be reached on 571-272-4791. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


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Art Unit 3743


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